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**Hearing Date: December 12, 2017 at
2:00 p.m.**
Objection Deadline: November 20, 2017

*Counsel to the Official Committee
Of Unsecured Creditors*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
: Case No. 16-13131-SCC
CHOXI.COM, INC., :
: Debtor. :
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**FIRST AND FINAL FEE APPLICATION OF FOX ROTHSCHILD LLP AS COUNSEL
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, FOR
ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED FROM
FEBRUARY 27, 2017 THROUGH OCTOBER 15, 2017**

Pursuant to Sections 330 and 331 of Title 11 of the United States Code, Fed. R. Bankr. P. 2016, S.D.N.Y. LBR 2016, Fox Rothschild LLP (“Fox Rothschild”) files this First and Final Fee Application (the “Application”), for final approval and allowance of \$113,789.25 as compensation for services rendered as counsel to the Official Committee of Unsecured Creditors (the “Committee”) and \$651.06 as reimbursement of actual and necessary expenses, for a total of \$114,440.31, for the period February 27, 2017 through October 15, 2017 (the “Service Period”).

In support of the Application, Fox Rothschild respectfully represents as follows:

BACKGROUND

1. On November 10, 2016 (the “Petition Date”), an involuntary petition under chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) was filed against Choxi.com, Inc. (the “Debtor”) in the United States Bankruptcy Court for the Southern District of New York by

Sanders Collection Inc., Consumer Shopping Inc., and Elite Brands Inc. (the “Petitioning Creditors”).

2. On December 5, 2016, the Debtor filed its answer to the Involuntary Petition by filing a voluntary petition under chapter 11 of Title 11 of the Bankruptcy Code.

3. On December 9, 2016, the Court entered an Order for Relief, converting the case to a chapter 11 case.

4. On December 15, 2016, the United States Trustee appointed the Committee.

5. Following its organizational meeting, the Committee selected, subject to Bankruptcy Court approval, Nutovic & Associates as its counsel in this chapter 11 case.

6. On December 18, 2016, the Committee filed an *Application for an Order Authorizing the Retention and Employment of Nutovic & Associates as Counsel for the Official Committee of Unsecured Creditors* [D.I. 40]. On January 24, 2017, the Court entered an Order approving the retention of Nutovic & Associates [D.I. 78].

7. On February 27, 2017, the Committee filed a Notice of Substitution of Attorney, substituting Paul J. Labov and Jason C. Manfrey of Fox Rothschild LLP for Nutovic and Associates.

8. On March 9, 2017, the Committee filed an *Application for an Order Authorizing the Retention and Employment of Fox Rothschild LLP as Counsel for the Official Committee of Unsecured Creditors Nunc Pro Tunc to February 27, 2017*[D.I. 97].

9. On March 24, 2017, this Bankruptcy Court entered an *Order Authorizing the Retention and Employment of Fox Rothschild LLP as Counsel for the Official Committee of Unsecured Creditors, Nunc Pro Tunc to February 27, 2017, Pursuant to 11 U.S.C. §§ 328 and*

1103, Fed. R. Bankr. P. 2014, and S.D.N.Y. LBR 2014-1 (the “Retention Order”) [D.I. 106]. A true and correct copy of the Retention Order is attached hereto as Exhibit “A”.

RELIEF REQUESTED

10. By this Application, Fox Rothschild seeks a first and final allowance of fees in the amount of \$113,789.25 for professional services rendered for and on behalf of the Committee during the Service Period. Fox Rothschild also requests reimbursement of \$651.06 for actual and necessary costs and expenses incurred during the Service Period.

11. Fox Rothschild also seeks fees in the amount of \$15,000.00 for the period from October 16, 2017 through the Effective Date of the Debtor’s Plan (the “Supplemental Period”), during which time Fox Rothschild anticipates incurring fees in connection with the implantation of the Plan and the Trust established thereunder.

12. The documentation reflecting the services performed by Fox Rothschild, the time expended by each professional and the hourly rate for each professional is attached hereto as Exhibit “B”. The documentation reflecting the actual and necessary costs and expenses incurred during the Service Period are attached hereto as Exhibit “C”.

PRIOR MONTHLY FEE APPLICATIONS

13. This is Fox Rothschild’s first and final fee application.

PROFESSIONAL SERVICES RENDERED

14. The professional services for which compensation is requested were performed for, or on behalf of, the Committee during the Service Period. The professional services for which compensation is requested were rendered solely in connection with and related to the Debtors’ chapter 11 case and on behalf of the Committee in connection with Fox Rothschild’s professional responsibilities as counsel to the Committee. Fox Rothschild believes that it has performed the

services requested of it in a skillful and efficient fashion, to the collective benefit of the Debtor and its creditors.

15. During the Service Period, Fox Rothschild billed the Debtor a total of 206.5 hours for professional and paraprofessional services rendered in connection with this case. All of the services performed by Fox Rothschild's professionals, as specified in the attached Exhibits, were necessary for the Committee to comply with its statutory duties and to fulfill its fiduciary obligations. Based on the hourly charges, a total of \$113,789.25 in legal services was rendered by Fox Rothschild during the Service Period, which represents a reasonable fee for such services.

16. As reflected in Exhibit "B", all services performed by Fox Rothschild's professionals and paraprofessionals were recorded in time increments of one-tenth (0.10) of hour time increments. Fox Rothschild utilized project billing codes consistent with the Intapp Time System ("INTAPP") to classify its time entries.

17. To apprise this Court of the legal services provided during the Service Period, Fox Rothschild sets forth the following summary of legal services provided in the project category that best relates to such services. However, because certain services may relate to one or more categories, services pertaining to one category may be included in another category. During the Service Period, Fox Rothschild billed time to the following project categories:

- a. Asset Analysis (0001). Among other things, Fox Rothschild expended time with regard to due diligence in examining the Debtor's assets, liens and loan documents. Fox Rothschild expended 18.2 hours of time for a charge of \$8,403.50 for services rendered with respect to this billing category.
- b. Business Operations (0003). Among other things, Fox Rothschild expended time in connection with an analysis of the Debtor's credit card

processing system. Fox Rothschild expended 3.0 hours of time for a charge of \$1,828.00 for services rendered with respect to this billing category.

- c. Case Administration (0004). Among other things, Fox Rothschild expended time in connection with review of rules regarding requirements related to various filings, index and organization of documents for use at hearings, and meetings, reviewing and maintaining dockets and case calendars, as well as other miscellaneous tasks not otherwise separately classifiable. Fox Rothschild expended 62.8 hours of time for a charge of \$36,024.00 for services rendered with respect to this billing category.
- d. Claims Administration (0005). Among other things, Fox Rothschild expended time in connection with review of the bar date motion, claims register and proofs of claim filed in this case on the claims agent's website. Fox Rothschild expended .7 hours for a charge of \$262.50 for services rendered with respect to this billing category.
- e. Fee/Employment Applications (0007). Among other things, Fox Rothschild expended time in connection with preparing Fox Rothschild's substitution of counsel, employment application, monthly statements of fees for CBIZ and the instant application. Fox Rothschild expended 40.4 hours of time for a charge of \$14,684.00 for services rendered with respect to this billing category.
- f. Financing (00009). Fox Rothschild expended time reviewing loan documents regarding the first lien lender and reviewing the cash collateral

stipulation. Fox Rothschild expended 5.9 hours of time for a charge of 3,608.00 for services rendered with respect to this billing category

- g. Litigation (0010). Fox Rothschild expended a considerable time researching potential causes of action against the Debtor and/or principals, including potential preference action and preparing and filing a Rule 2004 motion. . Fox Rothschild expended 11.3 hours of time for a charge of \$5,707.50 for services rendered with respect to this billing category.
- h. Meeting of Creditors (0011). Fox Rothschild expended time in connection with communicating with Debtor's counsel and the Committee concerning all aspects of this chapter 11 case. Fox Rothschild expended 1.9 hours of time for a charge of \$882.00 for services rendered with respect to this billing category.
- i. Plan and Disclosure Statement (0012). Fox Rothschild expended considerable time in all aspects of negotiating and reviewing the Plan and Disclosure Statement. Fox Rothschild expended 48.8 hours of time for a charge of \$32,372.00 with respect to this billing category.
- j. Business Analysis (0015). Among other things, Fox Rothschild expended time in connection with reviewing the Debtor's corporate documents. Fox Rothschild expended 0.8 hours of time for a charge of \$328.00 for services rendered with respect to this billing category.
- k. Corporate Finance (0016). Fox Rothschild prepared a lien analysis memorandum for the Committee. Fox Rothschild expended 2.6 hours of time for a charge of \$884.00 with respect to this billing category.

- l. Data Analysis (0017). Fox Rothschild reviewed spreadsheets provided by former Committee counsel regarding, among other things, the Debtor's sources and uses of funds. Fox Rothschild expended 5.5 hours of time for a charge of \$3,437.50 with respect to this billing category.
- m. Travel (0023). Fox Rothschild expended a limited amount of time traveling to a meeting in New York. Fox Rothschild expended 4.1 hours of time for a charge of \$1,322.25 (charged at half rates) for services rendered with respect to this billing category.

18. Fox Rothschild submits that this Application substantially complies with the local rules of the Court and the U.S. Trustee Guidelines. A Certification of Paul J. Labov is attached hereto as Exhibit “D” and incorporated by reference herein.

EVALUATION STANDARDS

19. Pursuant to 11 U.S.C. § 330(a)(1) of the Bankruptcy Code, the Court may award a retained professional “reasonable compensation for actual, necessary services” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). In determining the reasonableness of the proposed fee award, the Court is directed by 11 U.S.C. § 330(a)(3) to consider (a) the time spent; (b) the rates charged; (c) whether the services were necessary to the administration of or beneficial to the case; (d) whether the services were performed within a reasonable time, given the complexity, importance, and nature of the task; (e) whether the professional person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (f) whether the compensation is reasonable based on the customary compensation charged by comparably skilled professionals. 11 U.S.C. § 330(a)(3).

20. Fox Rothschild requests that the Court consider the following factors in determining the reasonableness of the amount of professional compensation requested by this Application:

- a. Time and Labor Required. Fox Rothschild expended 206.5 hours of professional services on behalf of the Committee during the Service Period, at an average billing rate of \$557.44 per hour including paraprofessionals. The time and labor spent by Fox Rothschild was reasonable and necessary to provide the Committee with the counsel needed to properly carry out its statutory and fiduciary duties.
- b. The novelty and difficulty of the questions involved. The issues addressed by Fox Rothschild in connection with its services to the Debtors have in some cases been novel and complex and required the expertise of professionals with a specialized background in reorganizations and bankruptcy law.
- c. The skill requisite to perform the services properly. The services performed by Fox Rothschild's professionals during the Service Period required the skills of trained bankruptcy professionals, with an appreciation and understanding of advanced reorganization concepts, as well as substantial expertise in bankruptcy litigation. Fox Rothschild's professionals were well suited for this engagement based on their education and experience. Fox Rothschild has endeavored to utilize the various levels of experience and seniority of its professionals to meet the requirements of the tasks that were

presented, and in this regard, Fox Rothschild believes it has effectively and efficiently represented the interests of the Committee in this matter.

- d. Preclusion from other employment. This engagement has not materially precluded Fox Rothschild from accepting other engagements.
- e. The fee customarily charged. The amount of compensation for which Fox Rothschild seeks interim and final allowance is based on hourly rates that are commensurate with rates customarily charged by Fox Rothschild's attorneys to other clients and are well within the range of those customarily charged by other professionals having comparable skills and expertise in similar matters.
- f. Whether the fee is fixed or contingent. Fox Rothschild's fees are fixed according to the time spent on behalf of the Debtors and the rates charged by Fox Rothschild. Fox Rothschild's compensation is contingent on the availability of sufficient assets and funds in the estate to pay such fees, and on allowance of such fees by the Court.
- g. Time limitations imposed by client or circumstances. This engagement on the whole has not involved an extraordinary number of time-critical challenges.
- h. Amount involved and results obtained. The amount of compensation requested in this Application is consistent with the results obtained.
- i. The experience, reputation and ability of the professional. Fox Rothschild is well qualified to serve as bankruptcy counsel for the Committee. Fox Rothschild's professionals maintain an excellent reputation as experienced

bankruptcy practitioners capable of guiding the Committee through the complicated chapter 11 process.

- j. Undesirability of the case. Representation of the Committee in this case has not been undesirable, except for the risk of non-payment of fees associated with any chapter 11 creditor representation.
- k. Nature and length of the professional relationship with the client. Prior to the Petition Date, Fox Rothschild was not engaged by the Committee.
- l. Awards in similar cases. Fox Rothschild believes the professional fees sought hereunder are consistent with fees charged by similarly skilled professionals for comparable services in other bankruptcy cases. The attorney's fees sought by this Application are based on hourly rates that are comparable to Fox Rothschild's customary and usual rates for its other clients for similar services. Further, the hourly rates charged by Fox Rothschild are well within the range of those customarily charged by other professionals having comparable skills and experience in similar matters.

21. Based on the criteria outlined in 11 U.S.C. § 330(a)(3), Fox Rothschild believes the Fees requested are reasonable considering the nature and extent of the services provided by Fox Rothschild.

EXPENSES

22. The out-of-pocket expenses incurred by Fox Rothschild during the Service Period total \$651.06 and are itemized on the Invoice attached hereto as Exhibit "C" and are summarized above in the cover sheet to this Application. Such expenses incurred by Fox Rothschild are reasonable and necessary to Fox Rothschild's representation of the Committee.

CERTIFICATION OF COUNSEL

23. The Certification of Paul J. Labov is attached hereto as Exhibit “D” and incorporated by reference herein.

COMPLIANCE WITH GUIDELINES

24. Fox Rothschild submits that this Application substantially complies with the local rules of this Court and the U.S. Trustee Guidelines. To the extent there has not been material compliance with any particular rule or guideline, Fox Rothschild respectfully requests a waiver or an opportunity to cure.

25. This is Fox Rothschild's first and final fee application pursuant to sections 330 and 331 of the Bankruptcy Code for allowance of fees and reimbursement of expenses in this case. Fox Rothschild has made no prior or other application to this or any other Court for the relief requested herein.

NOTICE

26. Notice of this Application has been given to (i) the Debtor and its counsel; (ii) the U.S. Trustee; and (iii) those parties who have filed a notice of appearance and request for service of pleadings in this case pursuant to Fed. R. Bankr. P. 2002. Fox Rothschild respectfully submits that no other or further notice need be provided.

PRAYER FOR RELIEF

27. Fox Rothschild seeks final allowance and payment of \$113,789.25 in fees and reimbursement of \$651.06 in actual expenses for the Service Period, together with fees in the amount of \$15,000.00 and related costs for the Supplemental Period.

WHEREFORE, Fox Rothschild respectfully requests that this Court (a) grant final approval and allowance of \$113,789.25 in compensation for services rendered and \$651.06 for

reimbursement of actual and necessary expenses, for a total of \$114,440.31 for the period February 27, 2017 through October 15, 2017, (b) fees in the amount of \$15,000.00 and related costs for the Supplemental Period, and (c) to grant such other and further relief as this Court may deem just and proper.

Dated: October 23, 2017
New York, New York

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Unsecured Creditors*

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